IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6099 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KK VASAVADA SINCE DECEASED THROUGH HIS HEIRS AND LEGAL R.

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners

MS MANISHA LAVKUMAR, AGP for Respondent No. 1

M/S PATEL ADVOCATES for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/04/2001

ORAL JUDGEMENT

The petitioners are heirs of a retired Judicial Officer pursuing the claim of the deceased petitioner for deemed date of promotion to the post of Assistant Judge

in the State Judicial Service and for consequential retiral benefits.

2. The deceased petitioner ("the petitioner" for short) was appointed as a Civil Judge (Junior Division) and Judicial Magistrate, First Class on 1.8.1961. The petitioner became eligible for promotion to the post of Assistant Judge in the year 1968. His case was considered by the High Court on its administrative side every year between 1970-79, but his name was not included in the select lists for the concerned years from the year 1980, however, the petitioner was considered to be ineligible for promotion to the post of Assistant Judge and he was, therefore, not permitted to appear at the written test and oral interview on the ground that the relevant provisions of the Gujarat Judicial Service Recruitment Rules laid down that the judicial officers above the age of 48 years, were not eligible for promotion to the post of Assistant Judge. This Court negatived the challenge, but the appeal was allowed by the Supreme Court and in the judgment reported in I.H.Shah Vs. State of Gujarat and another, 1986(2) GLR, 1178, the Supreme Court struck down the relevant rules after observing that the provisions of the aforesaid Rules were invalid being unreasonable, arbitrary and discriminatory and that they were capricious.

3. In view of the above pronouncement, all the judicial officers who were earlier not permitted to appear at the written test for promotion to the post of Assistant Judge on the ground of completion of 48 years of age were required to appear at the written test in June, 1986. The petitioner was also one such judicial officer. However, the petitioner's name was not included in the select list prepared pursuant to the selection held in June, 1986. The petitioner was again permitted to appear for the next test held in February 1987. Upon inclusion of the petitioner's name in the select list, the petitioner came to be promoted as an Assistant Judge in July, 1987. The petitioner ultimately retired from the judicial service in March, 1989. The petitioner submitted a representation to grant the petitioner deemed date of promotion in the cadre of Assistant Judges. This Court on its administrative side rejected the representation on 25.1.1990 which communication is under challenge in this petition.

4. Reply affidavit was filed by the Assistant Registrar of this Court on 17.5.1996. Rejoinder affidavit came to be filed by the petitioner in May, 1996. Thereafter, unfortunately the petitioner expired,

and therefore, his heirs made an application for being joined as party and the said application was granted.

5. At the hearing of this petition, Mr.P.V.Hathi, learned counsel for the petitioner raised the following contentions.:-

(i) Once Rule 6(4)(i) and Rule 6(4)(iii)(a) of the Gujarat Judicial Service Recruitment Rules were declared void and inoperative, all the judicial officers who were denied consideration for promotion to the post of Assistant Judge only on the ground that they had completed 48 years of age were required to be relegated to the respective position in seniority list and were required to be deemed to have passed the tests when debarred. Number of attempts for passing the tests held by the High Court had no relevance.

(ii) Two judicial officers junior to the petitioner in the cadre of Civil Judges (Junior Division) - Mr.M.D. Dhruv and Mr.D.M.Dholakia were promoted alongwith the petitioner in July 1987. Both these officers had also failed to pass the selection test prior to their completing the age of 48 years. Even the said officers were given the deemed date of promotion as if they were promoted when they reached the age of 48 years. The petitioner was entitled to get the similar treatment but was erroneously discriminated against him.

(iii) Respondent No.2 misinterpreted the judgment of the Apex Court in the case of I.H.Shah (supra) by confining the benefits only to those judicial officers who passed the selection test in a particular year and by taking into account the number of attempts for getting selected. Once a judicial officer passed the written test / oral interview for inclusion in the select list for promotion in the cadre of Assistant Judges all those who were earlier denied such consideration on account of their having completed 48 years of age were entitled to be given deemed date of promotion.

6. On the other hand, Ms.Manisha Lavkumar, learned AGP for the respondents has opposed the petition and submitted that when the petitioner failed to pass the test held in June, 1986, he was not entitled to get any deemed date of promotion and that only those who passed the test held in June, 1986, were entitled to get deemed date of promotion, because but for their having completed 48 years of age, they would not have been denied consideration for promotion to the post of Assistant Judge.

It is further submitted that Mr.M.D.Dhruv and Mr.D.M.Dholakia had passed the test held in June, 1986 and therefore, they were granted deemed date of promotion in the cadre of Assistant Judges.

Lastly, it is submitted that the judgment of the Supreme Court has been correctly interpreted by the respondents and no interference of this Court is called for in a petition under Article 226 of the Constitution.

7. Since the contentions urged on behalf of the petitioner are inter-connected, they are taken up for consideration together.

8. Having heard the learned counsel for the parties, this Court is unable to find any error in the decision of respondent No.2 in not granting the petitioner deemed date of promotion in the cadre of Assistant Judges. The petitioner had become eligible for promotion to the post of Assistant Judge way back in the year 1968. Between 1968 - 1979 the petitioner's case was considered for promotion and the petitioner was not found fit to be included in the select list. Hence, earlier the petitioner was not promoted not on account of the fact that there was any difficulty about the age limit. When the petitioner was well below the age limit of 48 years for as many as 10 years, the petitioner's case was considered for promotion but his performance was such that his name was not included in the select list. Between 1980 to May 1986, the petitioner's case was not considered for promotion to the post of Assistant Judge on the ground that he had completed 48 years of age and therefore, he was not eligible for promotion to the post of Assistant Judge. Embargo imposed by the rule to that effect was lifted by the judgment of the Supreme Court in the case of I.H.Shah (supra). The petitioner was considered as eligible for promotion to the post of Assistant Judge and was accordingly permitted to appear at the written test held in June, 1986 followed by the oral interview. Unfortunately, the select list prepared pursuant to the said selection did not include the petitioner's name, whereas names of two of his juniors Mr.M.D.Dhruv and Mr.D.M.Dholakia were included in the said select list of 1986. Hence the petitioner cannot say that if the embargo of 48 years had not been imposed and if he was permitted to appear at the written test / oral interview between 1980-1986, he would have cleared the test and his name would have been included in the select list. Naturally, all those judicial officers who succeeded at the written test held in June, 1986 followed

by oral interview and who were earlier denied consideration only on the ground that they having completed 48 years of age, were entitled to the deemed date of promotion and their claim was rightly considered for deemed date to the post of Assistant Judge. Such claim was not available to the persons like the petitioner who failed to pass the written test / interview held in June, 1986 and who cleared the subsequent test held in February, 1987. The question is not about number of attempts, but the question is whether the judicial officers who were wrongly denied the claim for appearing at the selection test between 1980-1986 and who did not clear the test at the next available opportunity in 1986 were entitled to make any grievance about not having been permitted to appear at the selection test between 1980-1986. The defence of the respondents that only those who cleared the test at the next available opportunity in June, 1986 alone were entitled to get deemed date of promotion in the cadre of Assistant Judges appears to be quite reasonable and in consonance with the equality clause embodied in Article 14 of the Constitution. Admittedly, Mr.M.D.Dhruv and Mr.D.M.Dholakia had passed such test held in June, 1986 and merely because promotion orders were issued in their case in July 1987 alongwith the promotion order of the petitioner, they could not have been denied their legitimate claim for deemed date because they did pass the selection test held in June, 1986 i.e. at the first available opportunity after they were denied permission to appear at the selection test between 1980-1986. Whether they had failed to pass such test prior to 1980 was not all germane.

9. As regards the reliance placed on the final direction given in the case of I.H.Shah (supra), the said argument is misconceived because Mr.I.H.Shah's name was included in the select list in 1983-1984 and upon completion of 48 years of age, his name was excluded from the select list which prompted him to file the petition where ultimately he succeeded, and therefore, the Supreme Court directed the respondents to restore the name of Mr.I.H.Shah in the select list of 1983-1984 and to give him promotion and all consequential benefits. Since the petitioner's name was never included in the select list prior to February, 1987, there was no question of giving any deemed date to the petitioner.

10. In view of the above, there is no substance in this petition and the same is dismissed. Rule is discharged with no order as to costs.

(M.S.Shah,J)
(pathan)